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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

In re DANIEL G., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL G.,

Defendant and Appellant.

F062726

(Super. Ct. No. 11JQ0058)

OPINION

APPEAL from a judgment of the Superior Court of Kings County. Steven D. Barnes, Judge.

Kelly Babineau, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Eric L. Christoffersen and Paul A. Bernardino for Plaintiff and Respondent.

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Following a contested jurisdiction hearing, the juvenile court found true allegations set forth in a juvenile wardship petition that appellant Daniel G. committed (1) first degree burglary, a serious and violent felony (Pen. Code, §§ 459, 1192.7, subd. (c), 667.5, subd. (c))¹ for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)) (count 1), (2) receiving stolen property (§ 496, subd. (a)) for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)) (count 2), (3) participation in a criminal street gang, a serious felony (§§ 186.22, subd. (a), 1192.7, subd. (c)) (count 3), and (4) grand theft of a firearm (§ 487, subd. (d)(2)) (count 4).² The court granted Daniel's motion to dismiss a fifth count alleged in the petition pursuant to Welfare and Institutions Code section 701.1. Following the subsequent disposition hearing, the court declared Daniel a ward of the juvenile court and ordered him to serve 90 days in juvenile hall. The court calculated Daniel's maximum term of confinement as 19 years.

On appeal, Daniel contends (1) the evidence is insufficient to sustain the juvenile court's findings that he committed the charged offenses and enhancements, and (2) his maximum term of confinement violated section 654. We find merit to Daniel's first contention with respect to counts 1 and 4, and reverse the court's true findings as to those counts, as well as the gang enhancement attached to count 1, and remand for a new dispositional hearing. In all other respects, we will affirm.

FACTS

A series of burglaries occurred in Corcoran on or about March 31, 2011.³ Azucena Garcia-Madrid's iPod was taken from her car, which had its window broken.

¹ All undesignated statutory references are to the Penal Code.

² Four other juveniles were adjudicated at the jurisdiction hearing, Alex R., Dominic M., Nathan R., and Israel F. (Nathan R. and Alex R. have different last names.)

³ All undesignated dates are to the year 2011.

Savannah Ybarra's car window was broken and her laptop stolen. The driver's side window of John Price Jones's sports utility vehicle was broken and his iPod stolen.

Between one and two a.m. on March 31, Marina Lefridge was talking on her cell phone while sitting in her car, which was parked on the street in front of her house. Seeing some shadows, she did not get out of the car. Two young men came up to the driver's side of the car and tried to open the door. Lefridge slammed the door shut; she was scared and could not figure out how to lock the doors, as the car was new. When the young men attempted to open the driver's side door again, Lefridge pulled it shut. Lefridge believed the young men were puzzled because the door kept closing; she thought they did not realize someone was in the car, as the night was dark, there were no lights on inside the car, and the windows were frosted up. When the two tried to open the door a third time, Lefridge pulled the door shut. By this time, Lefridge was able to lock the doors. The group, which Lefridge thought totaled four to six young men between the ages of 16 and 20 who were wearing dark clothing, began to walk away from the car. As the group left, one young man peered into the car.

Lefridge identified three of the juveniles being adjudicated at the hearing as being present that night, namely Nathan R., Dominic M., and Alex R. Lefridge believed Nathan was the first person who came up to her driver's side window, and Alex tried to open the door. Between 5 and 7:30 p.m. the previous evening, Lefridge was at the Corcoran YMCA playing basketball with a friend. A group of boys that included the same juveniles she identified in court were watching Lefridge and her friend play. Lefridge believed boys other than those she identified in court were in the group, but she did not know who they were or their names. According to Lefridge, this was the same group that attempted to break into her car. Lefridge did not recall if she saw Daniel at the YMCA and said she did not recognize him.

At about 3:40 a.m. on March 31, Jason Proctor went into his attached garage and found all of his garage cabinets open, the garage door up, and his 2009 Chevy four-door,

four-wheel drive, pickup truck that had been parked in the driveway gone. Also missing was a set of Corvette keys that were hanging in the garage by the door that led into the house, as well as keys to the truck. A .223 hunting rifle and a box of .223 ammunition were in the back of the truck. As Proctor was on the phone to the police to report the theft, he was told that police had found his truck in front of another house in Corcoran. When he got to the truck, he noticed his garage door opener was missing. Police later returned to him the two sets of car keys, the garage door opener, ammunition, rifle and some shotgun shells that had been in his garage.

At about 11 p.m. on March 31, Corcoran Police Officer Laura Duran responded to a call that approximately seven to eight male juveniles wearing dark clothing were looking into vehicles in the 1300 block of Hall Avenue in Corcoran. One of the juveniles was described as wearing a black and white checkered jacket and another as possibly carrying a black stick. Officer Duran checked the area, but could not locate the subjects. A citizen advised Officer Velasco, who also responded to the call, that he observed seven to eight subjects wearing red shirts and running southbound. Sometime after 2:30 a.m., Officer Duran was checking the area where the initial call came from when she saw a “dark subject” with a medium build, wearing dark clothing and a beanie cap, leaving a residence at 1312 Hall Avenue. Officer Duran could not identify the subject. As he opened the door to the house, Officer Duran saw several thin-built males who appeared to be juveniles walking back and forth inside the front room. Officer Duran later was dispatched to the location of a white Chevy work truck, which was less than a quarter of a mile from the residence at 1312 Hall Avenue. Officer Duran is Daniel’s distant cousin and had seen him before. She did not recognize Daniel as one of the individuals she saw inside the residence.

Corcoran Police Officer Pedro Castro also responded to 1312 Hall Avenue on March 31, along with Corcoran Police Detective Eric Essman. Detective Essman knocked on the front door while Officer Castro stood at the rear of the house. There was

no immediate answer to the knock; the officers heard a lot of movement inside the house. After about five minutes, Angie R. answered the door. The officers told her they needed to determine what males were in the residence and asked to speak to Angie's two juvenile sons, as well as any other subjects in the home. Angie said her two sons were home, but denied that anyone else was there, and consented to a search of the house.

Angie's two sons, Nathan and Henry, were in the living room where police found a laptop computer, a .223 caliber rifle inside a rifle case, a bag of .22 caliber ammunition, and sticks or bats. Officer Castro located Daniel and another male juvenile, Alex R., hiding in a utility room, where police found a box of .223 caliber rounds, along with some dark sweatshirts and three to four beanie caps. An iPod was discovered inside Alex's pants pocket along with some cash. Daniel was not holding the ammunition found in the utility room.

Officer Castro also found two other male juveniles, Dominic M. and Israel F., in a bedroom that Angie claimed was hers; Dominic was asleep on the bed and Israel was hiding under a dresser. In the bedroom, police found two sets of car keys on the floor, one for a Chevy and the other for a Corvette, and an iPod under the mattress. Dominic admitted he stole the iPod that was located under the mattress from a vehicle. Nathan, who was wearing a black and white checkered shirt-type jacket, admitted to police he stole all of the items located in the living room, but refused to give the details.

The house was not Daniel's residence. Officer Castro asked Daniel what he was doing there; Daniel said he spent the night there and did not leave the house any time that night. Daniel did not tell him where in the house he slept that night. When Officer Castro asked Daniel if he knew anything about vehicle break-ins that night, Daniel denied breaking into vehicles and said he did not know anything about it. Daniel was not dressed in a Pendleton sweater when Officer Castro found him. Officer Castro asked Daniel if he knew any of the subjects in the house and, if so, how he knew them. Daniel responded that he knew Nathan and Henry because he is related to them, and he was

friends with Alex. Daniel appeared nervous when answering questions. Detective Essman, who initially stayed on the front porch while Officer Castro cleared the house and brought the juveniles out to him, believed Daniel was wearing a light color t-shirt and jeans. He was not wearing a beanie or sweatshirt.

Police determined that Proctor was the registered owner of the rifle, which he later identified as his. The laptop was returned to its owner, Ybarra, by matching the serial number and laptop box she provided. Jones identified the 80-gigabyte iPod that was found in Alex's pocket as his by the serial number which was on the original box he provided. Madrid identified an iPod Touch as hers based on its appearance, as it had the same white silicon case as hers and her e-mail messages were stored on the device.

Deputy Probation Officer Damon Parryman, who was assigned to the Kings County Gang Task Force, testified as an expert on gangs. Parryman was familiar with the Nortenos, a criminal street gang with approximately 2,500 members in Kings County. According to Parryman, the Nortenos engage in various patterns of criminal activity, including shooting at inhabited dwellings, shooting from cars, assaults, robbery, burglaries, and various degrees of theft. Parryman was aware of two Nortenos gang members in Kings County who had been convicted of violating sections 246 and 186.22, subdivision (a).

In Parryman's opinion, all of the juveniles at the hearing were part of the Nortenos street gang in Kings County, and the charges being tried were the type of activities that would further and benefit the gang. Specifically, Parryman testified that in his opinion, the following acts would further and benefit the gang's interests: (1) the burglary of Proctor, including taking his vehicle, weapon, ammunition and car keys; (2) receiving stolen property, including cell phones, rifles, car keys, ammunition and a laptop; (3) possessing items that would be used as burglary tools; and (4) stealing vehicles. Parryman explained that in Kings County, young Nortenos steal vehicles to get around town, as they do not own their own vehicles and do not want to use their parents' cars;

they know how long it will take for a vehicle to be reported stolen and the police to enter the vehicle into the system. Home burglaries help the Nortenos because stolen property can be sold and the money used to purchase illegal firearms or other forms of contraband. Stealing a firearm helps a Norteno by giving the person who stole it more credit in the gang and increases the gang's armory for their ongoing battles with their arch enemy, the Surenos, with whom the Nortenos have had numerous gang clashes in which shots were fired.

While Parryman was not personally aware of Daniel and had never seen him before, he had a list of four prior contacts Daniel had with law enforcement. The first contact occurred on December 10, 2010, when Officer Avalos reported Daniel was a gang member. In that contact, Daniel, who was wearing black and red shoes, was with another individual who stated he had been a gang member his whole life. When Daniel was asked about his affiliation, he said he also was a Norteno gang member. Daniel has a moniker, "Little Daniel," and stated he had been a Norteno gang member "forever." The second contact was the allegations at issue at the jurisdiction hearing. The third contact was a fight Daniel participated in at the Kings County juvenile center; Daniel, Alex, Nathan and another Norteno from Avenal were involved in a fight against a Sureno from Avenal. While a report of that incident had been taken, no charges had been filed. The fourth contact was a gang task force classification form from the juvenile center on which was written that Daniel is a Norteno. According to Parryman, this means that Daniel told the classification officer he is a Norteno. Based on these contacts and testimony received at the jurisdiction hearing, Parryman opined Daniel was an active participant in the Norteno street gang.

Parryman opined the other juveniles who were in the home that night, Alex, Israel, Dominic, and Nathan, were also Norteno gang members. Parryman testified the Nortenos have deemed the Corcoran YMCA as their territory and the YMCA is a hangout for street gangs in Corcoran. Around December 2010, Officer Castro contacted

Alex when responding to a report of a fight. Alex admitted to Officer Castro that he was a Norteno gang member. Other juveniles found in the home, Israel and Dominic, had also admitted gang membership to Officer Castro in the past. However, this was Officer Castro's first contact with Daniel.

DISCUSSION

Burglary (Count 1) and Theft of a Firearm (Count 4)

The wardship petition alleged in count 1 that Daniel committed a burglary of Proctor's residence in violation of section 459 and, in count 4, that Daniel unlawfully stole Proctor's firearm in violation of section 487, subdivision (d)(2). Daniel contends there is insufficient evidence to support the true findings as to these counts because the evidence does not establish he was present at the time of the burglary and theft of the firearm. We agree.

Our duty on a challenge to the sufficiency of the evidence is to review the whole record in the light most favorable to the judgment for credible, reasonable, and substantial evidence of solid value that could have enabled any rational trier of fact to have found the defendant guilty beyond a reasonable doubt. (*Jackson v. Virginia* (1979) 443 U.S. 307, 318; *People v. Prince* (2007) 40 Cal.4th 1179, 1251 (*Prince*).) That standard applies to circumstantial and direct evidence alike and requires us to presume in support of the judgment the existence of every fact a reasonable trier of fact reasonably could have deduced from the evidence. (*Prince, supra*, at p. 1251.)

To prove residential burglary the prosecution must prove that Daniel entered an inhabited dwelling and did so with the intent to commit a felony. (§ 459.) To prove theft of a firearm, the prosecution must prove (1) Daniel took possession of a firearm that belonged to Proctor, (2) that he did so without Proctor's consent, (3) when he did so, he intended to deprive Proctor of the firearm, either permanently or for an extended period of time, and (4) he moved the firearm a small distance. (§ 487, subd. (d)(2); CALCRIM No. 1800.)

The evidence at the hearing showed that on the night in question, a number of cars were broken into and items stolen from them. That same night, items were stolen from Proctor's garage, his truck was taken and moved to another location, and a hunting rifle and ammunition were taken from the truck. During that time period, a group of four to six young men between the ages of 16 and 20 and wearing dark clothing attempted to open the door to Lefridge's car while she was sitting inside. Lefridge identified three of the group's members as Nathan, Dominic and Alex, but did not identify any other member of the group. Lefridge saw the same group of young men at the YMCA the previous evening. She did not recall, however, if she saw Daniel at the YMCA and testified that she did not recognize him. Later that night, police found a group of young men, all of whom are gang members, at a house with the stolen items. One of those young men was Daniel, who told police he was visiting the house, had spent the night there, and had not left at any time. None of the stolen items was found on Daniel's person, and he was not wearing clothing consistent with the descriptions given of the young men.

From this evidence, it is reasonable to infer that the group of young men Lefridge identified as attempting to break into her car was the same group that broke into Proctor's garage, stole items from inside, and took a firearm from Proctor's truck. The evidence also supports a finding that the group included Nathan, Dominic and Alex. There is insufficient evidence, however, to prove beyond a reasonable doubt that Daniel was a member of that group, as Lefridge did not identify him as one of the group's members, did not see him at the YMCA, and even testified that she did not recognize Daniel.

The Attorney General contends there is evidence from which the juvenile court reasonably could have inferred that Daniel aided and abetted the others in committing the burglary and theft of the firearm. The evidence the Attorney General points to is Daniel's presence at the house after those crimes were committed, his admitted friendship with Alex, and relationship with Nathan (who confessed to stealing the .223 caliber rifle and

ammunition), and that he hid in the utility room which contained the stolen box of .223 caliber rounds, several dark sweatshirts and up to four beanie caps.

““A person aids and abets the commission of a crime when he or she, (i) with knowledge of the unlawful purpose of the perpetrator, (ii) and with the intent or purpose of committing, facilitating or encouraging commission of the crime, (iii) by act or advice, aids, promotes, encourages or instigates the commission of the crime.”” (*People v. Campbell* (1994) 25 Cal.App.4th 402, 409.) “[N]either presence at the scene of a crime nor knowledge of, but failure to prevent it, is sufficient to establish aiding and abetting its commission. [Citations.] However, ‘[a]mong the factors which may be considered in making the determination of aiding and abetting are: presence at the scene of the crime, companionship, and conduct before and after the offense.’” (*Ibid.*)

Although the evidence the Attorney General highlights is certainly relevant to the question of Daniel’s culpability as an aider and abettor, we have found no evidence of any specific action or advice taken by Daniel that aided, promoted, encouraged or instigated the commission of the burglary and theft by Nathan, Alex or Dominic, or other group members. Daniel’s presence at the house following the burglaries and his hiding from police in a room with some of the stolen items certainly increased the likelihood that Daniel knew about the crime spree that took place that night. But there was no evidence Daniel played a supporting role in the commission of those crimes. Daniel’s mere presence in the house, his relationships with those who committed the burglary and theft, and his hiding from police are insufficient to establish he aided and abetted the crimes of burglary and theft of the firearm.

Because there was insufficient evidence Daniel committed the crimes of burglary and theft of a firearm, either directly or as an aider and abettor, the true findings under counts 1 and 4 must be reversed. In light of this decision, we need not reach Daniel’s contention that the juvenile court erred in failing to stay the term imposed on count 4.

Receiving Stolen Property

Daniel contends the evidence is insufficient to support his adjudication for receiving stolen property because the evidence only shows his mere presence in the house, which was not his house, with the stolen property. We disagree.

The crime of receiving stolen property (§ 496, subd. (a)) requires proof of three elements: “(1) the property was stolen; (2) the defendant knew it was stolen; and (3) the defendant had possession of it.” (*In re Anthony J.* (2004) 117 Cal.App.4th 718, 728 (*Anthony J.*)) “The requisite possession of the stolen property may be either actual or constructive” (*Ibid.*)

“Actual possession means the object is in the defendant’s immediate possession or control. . . . Constructive possession means the object is not in the defendant’s physical possession, but the defendant knowingly exercises control or the right to control the object.” (*In re Daniel G.* (2004) 120 Cal.App.4th 824, 831.) “The inference of dominion and control is easily made when the [item] is discovered in a place over which the defendant has general dominion and control: his residence [citation], his automobile [citation], or his personal effects [citation].” (*People v. Jenkins* (1979) 91 Cal.App.3d 579, 584.) The prosecution need not establish that a defendant has exclusive possession of the stolen property. (*Anthony J., supra*, 117 Cal.App.4th at p. 728.) “[P]ossession may be imputed when the [item] is found in a place which is . . . subject to . . . joint dominion and control of the accused and another.” (*People v. Newman* (1971) 5 Cal.3d 48, 52, overruled on other grounds in *People v. Daniels* (1975) 14 Cal.3d 857, 862, italics added.)

“[P]roof of knowing possession by a defendant of recently stolen property raises a strong inference of the other element of the crime: the defendant’s knowledge of the tainted nature of the property. This inference is so substantial that only ‘slight’ additional corroborating evidence need be adduced in order to permit a finding of guilty.” (*People v. Anderson* (1989) 210 Cal.App.3d 414, 421.) “Our Supreme Court has indicated that

the slight corroboration that permits an inference that the possessor knew that the property was stolen may consist of no explanation, of an unsatisfactory explanation, or of other suspicious circumstances that would justify the inference.” (*People v. O’Dell* (2007) 153 Cal.App.4th 1569, 1575.)

Daniel does not dispute that stolen property was found inside the house where he was staying overnight. He asserts, however, there was no evidence he knew of the presence of the property or that it was stolen, and no evidence he possessed it. Daniel, however, admitted to police that he was staying in his relative Nathan’s house that night and that he had stayed there the entire night. Based on this, the juvenile court reasonably could find that Daniel was present in the house when Nathan, Dominic, and Alex returned there with the stolen property and therefore Daniel knew of the property’s presence. The juvenile court also reasonably could infer that he knew the items were stolen, given that he was related to Nathan and therefore not a stranger to him or his house, and that it was the middle of the night when the group returned to the house with the property. Finally, the juvenile court reasonably could infer Daniel possessed the property, as he was in the house where he was staying the night with the stolen property and, when police arrived, he hid in the utility room where stolen ammunition was found, thereby exhibiting a consciousness of guilt. (See *People v. Dabb* (1948) 32 Cal.2d 491, 500 [consciousness of guilt may be inferred from attempt to avoid apprehension].) At a minimum, he had constructive possession of the stolen items. Therefore, we reject Daniel’s claim that the evidence is insufficient to sustain his adjudication for receiving stolen property.

The Street Gang Offense (Count 3) and Enhancement

Daniel argues the evidence was insufficient to support the true finding on the substantive gang offense alleged in count 3 as well as the gang enhancement.

Under section 186.22, subdivision (a), a person may be convicted of a substantive gang participation offense, also called street terrorism. The statute punishes “[a]ny

person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang....” (§ 186.22, subd. (a).) This crime consists of three elements: (1) the defendant actively participates in a criminal street gang (the active participation element); (2) the defendant knows at the time of such participation that members of the gang have or are engaged in a pattern of criminal gang activity (the pattern of activity element); and (3) the defendant willfully promotes, furthers, or assists any felonious conduct by members of the gang (the willfully assisted element). Our Supreme Court has confirmed this third element does not require that the conduct be gang related; as the statute plainly states, the conduct need only be felonious criminal conduct. (*People v. Albillar* (2010) 51 Cal.4th 47, 55-56 (*Albillar*).) “Contrary to what is required for an enhancement under section 186.22(b), section 186.22(a) does not require that the crime be for the benefit of the gang. Rather, it ‘punishes active gang participation where the defendant promotes or assists in felonious conduct by the gang. It is a substantive offense whose gravamen is the *participation in the gang itself*.’” (*People v. Martinez* (2008) 158 Cal.App.4th 1324, 1334.)

Daniel contends the prosecution failed to prove he actively participated in the gang or that he assisted in committing felonious criminal conduct. First, he claims there was insufficient evidence to show he committed or aided and abetted the alleged offenses. Since we have concluded there was sufficient evidence to support the true finding on count 2, receiving stolen property, this claim fails. Next, he contends there was insufficient evidence to establish he was an active participant in the gang on the date of the offense. But the evidence showed that he was a gang member, as he admitted to police in December 2010 that he had been a member of the Norteno gang forever and had a moniker, and that on March 31, he engaged in felonious criminal conduct with fellow gang members, namely receiving stolen property. (See *People v. Castenada* (2000) 23

Cal.4th 743, 747 (*Castenada*) [proof of active participation requires a showing that the defendant's involvement with a criminal street gang was "more than nominal or passive"].) This was sufficient proof that Daniel actively participated in a criminal street gang within the meaning of section 186.22, subdivision (a). (*Castenada, supra*, 23 Cal.4th at p. 753 [sufficient proof defendant actively participated in a criminal street gang where he committed the robbery and attempted robbery he was also charged with, he had many previous contacts with the criminal street gang, and he admitted gang membership on those occasions].)

Daniel also contends there was insufficient evidence to support the true finding on the section 186.22, subdivision (b)(1) enhancement because there is no evidence the crimes were committed for the gang's benefit. This enhancement was originally attached to both counts 1 and 2. Since we have concluded there was insufficient evidence to support the true finding on count 1, the true finding on the accompanying enhancement must be reversed and we restrict our discussion here to the enhancement attached to count 2, receiving stolen property.

Section 186.22, subdivision (b)(1) "requires that the crime be committed (1) for the benefit of, (2) at the direction of, or (3) in *association* with a gang." (*People v. Morales* (2003) 112 Cal.App.4th 1176, 1198 (*Morales*).) The trier of fact reasonably can infer the requisite association from the fact the defendant committed the charged crimes in association with fellow gang members. (*Ibid.*) The "specific intent" prong of the statute does not require a specific intent to promote, further, or assist in any criminal conduct other than the criminal conduct constituting the crime currently being committed. "By its plain language, the statute requires a showing of specific intent to promote, further, or assist in 'any criminal conduct by gang members,' rather than *other* criminal conduct." (*People v. Romero* (2006) 140 Cal.App.4th 15, 19.) "Commission of a crime in concert with known gang members is substantial evidence which supports the inference that the defendant acted with the specific intent to promote, further or assist

gang members in the commission of the crime.” (*People v. Villalobos* (2006) 145 Cal.App.4th 310, 322; see also *Morales, supra*, 112 Cal.App.4th at p. 1198.) “[S]pecific intent to *benefit* the gang is not required.” (*Morales, supra*, 112 Cal.App.4th at p. 1198.)

“[T]he typical close case is one in which one gang member, acting alone, commits a crime.” (*Morales, supra*, 112 Cal.App.4th at p. 1198.) This is not a close case. At a minimum, there were five gang members, including Daniel, involved in the receipt of stolen property after a course of criminal activity by at least four of those gang members, which included the burglary of Proctor’s house and various vehicle break-ins. The juvenile court reasonably could infer that Daniel, in joining in the receipt of stolen property with other gang members, acted “in association with any criminal street gang” and did so “with the specific intent to promote, further, or assist in any criminal conduct by gang members.” (§ 186.22, subd. (b)(1).)

Since Daniel committed count 2 in association with other gang members, the case he relies on, *In re Frank S.* (2006) 141 Cal.App.4th 1192, is distinguishable. There, this court concluded substantial evidence did not support the specific intent element of the gang enhancement where there was no evidence the minor, who police found to be in possession of a concealed weapon while riding a bicycle down the street alone, was in gang territory, had gang members with him, or had any reason to expect to use the weapon in a gang-related offense. (*Id.* at p. 1199.) In contrast here, Daniel was with other gang members when he received the property his fellow gang members had stolen.

Daniel also cites *Garcia v. Carey* (9th Cir. 2005) 395 F.3d 1099, claiming it is instructive in this area. Our Supreme Court, however, has definitively rejected *Garcia* in *Albillar, supra*, 51 Cal.4th at p. 66, when it resolved the conflict between *Garcia* (and other Ninth Circuit cases) and various cases decided by California Courts of Appeal. In *Albillar*, the court explained that *Garcia* construed the statute “to require evidence that a defendant had the specific intent to further or facilitate *other* criminal conduct—i.e., ‘other criminal activity of the gang apart from’ the offenses of which the defendant was

convicted.” (*Albillar, supra*, 51 Cal.4th at p. 65.) *Albillar* holds to the contrary: “[T]he scienter requirement in section 186.22(b)(1)—i.e., ‘the specific intent to promote, further, or assist in any criminal conduct by gang members’—is unambiguous and applies to *any* criminal conduct, without a further requirement that the conduct be ‘apart from’ the criminal conduct underlying the offense of conviction sought to be enhanced.” (*Albillar, supra*, at p. 66.) The court in *Albillar* concluded: “[I]f substantial evidence establishes that the defendant intended to and did commit the charged felony with known members of a gang, the jury may fairly infer that the defendant had the specific intent to promote, further, or assist criminal conduct by those gang members.” (*Albillar, supra*, 51 Cal.4th at p. 68.)

As we have previously discussed, here substantial evidence establishes that Daniel committed the charged felony, receiving stolen property, with known members of a gang. From this, the juvenile court could infer Daniel committed the crime in association with a gang and with the specific intent to promote, further, or assist criminal conduct by those gang members. In short, substantial evidence supports the gang enhancement attached to count 2.

DISPOSITION

The juvenile court's true findings in counts 1 and 4, as well as the true finding on the allegation attached to count 1, are reversed. The matter is remanded to the juvenile court for a further disposition hearing. In all other respects, the judgment is affirmed.

Gomes, J.

WE CONCUR:

Cornell, Acting P.J.

Franson, J.